

**COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES
AND SUBSTANCE ABUSE SERVICES**

Rules Committee Minutes

**Clarion Hotel State Capital
320 Hillsborough Street
Raleigh, NC 27603**

Wednesday, July 11, 2007

Attending:

Commission for MH/DD/SAS Members: Floyd McCullouch, Anna Marie Scheyett, Dr. Richard Brunstetter, Dorothy Rose Crawford, Mazie T. Fleetwood, Ann Forbes, George Jones, Martha Martinat Pender McElroy, Emily Moore, Jerry Ratley, Carl Shantzis, Ed.D., CSAPC, Clayton, Cone, Laura Coker, Ellen Holliman

Ex-Officio Members: Peggy Balak, Sally R. Cameron, Yvonne Copeland, Deby Dihoff, Joe Donovan, Bob Hedrick, Larry Pittman

Excused: Dr. William Sims, Lois T. Batton, Connie Mele, Pearl Finch

Division Staff:

Leza Wainwright, Denise Baker, Marta T. Hester, Andrea Borden, Chris Phillips, Spencer Clark, Phillip Hoffman, Laura White, Flo Stein, Lena Klumper, Martha Lamb, Jim Jarrard, Mark O'Donnell, Shealy Thompson, Tracy Ginn, Glenda Stokes

Others: Christine Trottier, Louise G. Fisher, Karen Murphy, Paula C. Fishman, Stephanie Alexander, Diane Pomper, Ashley Matlock, John L. Crawford

Handouts:

Mailed Packet:

- 1) July 11, 2007 Rules Committee Agenda
- 2) April 11, 2007 Draft Rules Committee Minutes
- 3) Amendment of 10A NCAC 27G .0813 - Waiver of Licensure Rules
- 4) Proposed Adoption of 10A NCAC 27I .0400 – Secretary Approval of LME Service Delivery
- 5) Proposed Amendment of 10A NCAC 27G .0600 – Area Authority or County Program Monitoring of Facilities and Services
- 6) Proposed Adoption of 10A NCAC 27G .7000 – LME Response to Complaints
- 7) Proposed Adoption of 10A NCAC 27G .7004 – Appeals Regarding Utilization Review Decisions for Non-Medicaid Services
- 8) Proposed Adoption of 10A NCAC 27I .0200 – Local Business Plans
- 9) Proposed Adoption of 10A NCAC 27G .0507 – Area Board Evaluation of an Area Director
- 10) Proposed Adoption of 10A NCAC 27G .7100 – Target Populations
- 11) Proposed Adoption of 10A NCAC 28F .0214 – LME Utilization of State Hospitals
- 12) Proposed Adoption of 10A NCAC 27A .0300 – Payments, Reporting and Settlement for LME Systems Management

Additional Handouts:

- 1) NC Providers Council Comments on Proposed Rules
- 2) Items Related to Proposed “*Payment, Reporting and Settlement Rules for LME Systems Management*”: 10A NCAC 27A .0301 through .0304
- 3) Session Law 2006-142 (House Bill 2077)

Call to Order:

Floyd McCullough, Chairman, Rules Committee, called the meeting to order at 9:45 am. Mr. McCullough delivered the Invocation and thanked those committee members whose terms expired last month for their service and dedication to the Commission. He also issued the ethics reminder and reviewed the list of excused absences: Connie Mele, Pearl Finch, Lois Batton, Dr. William Sims. Mr. McCullough announced that Joe Donovan, Ex-Officio Member, would no longer be serving on the Commission and expressed the Commission's gratitude for his work. He also announced that Anna Scheyett is now the Associate Dean at UNC Chapel Hill School of Social Work.

Approval of the Minutes:

Mazie Fleetwood made the following suggestions:

- 1) Page 12, under 2(b)(iii) it should read as follows: develop a comprehensive plan, in partnership ~~will~~ with all impacted stakeholders, for improvement in Community Support Service provision.
- 2) Page 15 on the second paragraph, Ms. Fleetwood asked to amend the statement to read "Ms. Fleetwood asked for clarification that a letter of support does not imply that financial assistance will be available for the provider".
- 3) Page 16 under **Qualified Professional/Associate Professional**, the last sentence should read as follows: Ms. Holliman agreed to work with Ms. Copeland to recommend a provider to Mr. McElroy regarding ~~the~~ who should sit on this work group.

Upon motion, second, and unanimous vote the Rules Committee approved the minutes of the April 11, 2007 Rules Committee meeting with the recommended changes.

10A NCAC 27G .0813 – Amendment of Waiver of Licensure Rule

Stephanie Alexander, Division of Health Service Regulation, formerly the Division of Facility Services, Mental Health Licensure, presented the amendment of Waiver of Licensure rule. Ms. Alexander presented two changes to the Waiver of Licensure rule process to update information and reflect the contested case requirements in accordance with G.S. 150B.

Ms. Alexander also noted that Governor Easley signed the order changing the name of the Division of Facility Services to the Division of Health Service Regulation. There was a question regarding updating the language in the rule to match the organization's new name. Ms. Alexander stated that they would be making all the changes in the rule.

Upon motion, second and unanimous vote, the Rules Committee approved the proposed amendment of 10A NCAC 27G .0813 to be forwarded to the Commission for final review for publication.

10A NCAC 27I .0400 – Proposed Adoption of Secretary Approval of LME Service Delivery

Leza Wainwright, DMH/DD/SAS, Deputy Director, presented the proposed adoption of Secretary Approval of LME Service Delivery rule. The proposed rule is being initiated as a result of the mandate, in House Bill 2077, that DMH/DD/SAS put into rule all of the activities that DMH/DD/SAS had previously implemented as policy guidance. It is also mandated, as part of the Reform legislation, that the Secretary approve direct services delivery by Local Management Entities (LMEs) under appropriate circumstances.

The Secretary has rulemaking authority and the proposed rule is presented for information and comment. Therefore, no action is required.

Mrs. Wainwright stated that the Division had received two suggested changes from the NC Council of Community Programs and the changes would be reflected in the version of the rules to be presented to the full Commission. The two requested changes were that the Division include something about how a LME would go about getting approval in an emergency situation and that there be some timeframe put on how long the Secretary would have to make a decision.

Mrs. Wainwright received the following questions and comments during her rule presentation:

- Pender McElroy, Commission Chairman, requested a summary of what happened historically. Mr. McElroy stated that when the Reform was enacted in 2001, no LMEs were going to deliver services; however, that proved to be unrealistic and now we are seeing by rule the opportunity for a LME to directly deliver services.
 - Mrs. Wainwright stated that it was always envisioned, in the Reform legislation, that there could be the need for an LME to continue or to restart service delivery.
- Mr. McElroy asked how many applications the Division expected to receive from LMEs to deliver services.
 - Mrs. Wainwright responded that in the past year, the Division received approximately twelve and the majority was for a single service – facility-based crisis.
- Bob Hedrick, Ex-Officio Committee Member, presented a handout with comments to the proposed rule from the NC Providers Council's rule subcommittee (See Attachment).
 - Mrs. Wainwright stated that she had seen the comments regarding their endorsement rule; however, there was a separate endorsement rule that addresses the Division's endorsement of the LME provision of services. Therefore, she did not know if it was necessary to restate that in this particular rule.
 - In terms of monitoring, Mrs. Wainwright felt that their point was well taken, and if it is not addressed in current rule, it will be addressed some place else.
- Clayton Cone, Rule Committee Member, questioned whether the approval for LME service delivery would be time limited or reviewable.
 - Mrs. Wainwright indicated that the approval would span a six month time period and would be reviewable.

10A NCAC 27G .0600 - .0610: This series of rule changes are in response to Session Law 2002-164, Senate Bill 163. The Secretary of the Department of Health and Human Services has rulemaking authority for the subject matter of the proposed amendments. No action is required by the Rule Committee.

- **10A NCAC 27G .0600 - Proposed Amendment of Area Authority or County Program Monitoring of Facility and Services**
 - The Secretary has rulemaking authority for the subject matter of the proposed rules. The proposed amendments are presented for information and comment. Therefore, no action is required.
- **10A NCAC 27G .0601 - Scope**
 - Jim Jarrard, DMH/DD/SAS, Accountability Team Leader, presented the proposed amendment of this rule.
 - The amendment is necessary to update the rule to include accurate information and incorporate additions to make monitoring rules consistent with endorsement and other LME requirements vis-à-vis providers of MH/DD/SA services.
- **10A NCAC 27G .0602 - Definitions**

- Mr. Jarrard stated that there were several new definitions including an added definition of clinical home.
 - He further advised that clinical home is a term of art in Medicaid which is used for those providers who accomplish certain functions.
 - Mr. Jarrard also noted that there is the requirement that the LME determine, for monitoring purposes, a frequency regarding how often and to what degree it will monitor each of its providers in the catchment area.
 - Bob Hedrick, Ex-Officio Committee member, presented a handout with comments to the proposed rule from the NC Providers Council's rule subcommittee referring to the definition of clinical home (See Attachment).
 - A Committee member asked if there was a fiscal note done on the expansion of the clinical home definition. Mr. Jarrard stated that he would take this information back to the Division to be addressed.
- **10A NCAC 27G .0603 – Incident Response Requirements for Categories A and B Providers**
 - Shealy Thompson, DMH/DD/SAS, Quality Management Team Leader, presented on the proposed amendment of Incident Response Requirement for Categories A and B Provider rule.
 - Mrs. Thompson stated that main changes being put in place are to require providers to have internal policies that specify timelines for responding to incidents and adhering to confidentiality requirements. The other main change is noted in Paragraph (b) the response to a level III incident. She also added that the Division received comments from the NC Provider Council and the NC Council around the timelines for the preliminary finding report and for the final report and that the Division will be reviewing their comments.
 - The final change involves communicating the results of the review to the home and host LMEs and the clinical home provider; this is in order to keep those who are involved in the clients care informed of the situation.
 - Anna Scheyett, Co-Chair, Rules Committee, asked about the role of the Human Rights Committee in this process. Ms. Thompson responded that they receive reports on this at the aggregate level. Ellen Holliman, Committee member, added that it is done different ways: some Human Rights Committees look at each report while others may look at the aggregate data. Ms. Scheyett noted the importance of examining Human Rights Committee rules and client rights rules in general, as per the Commission strategic plan.
- **10A NCAC 27G .0604 – Incident Reporting Requirements for Categories A and B Providers**
 - Ms. Thompson noted that changes for this rule are to close the communication loop such as reporting incidents when the individual is not in the care of the provider.
 - The other change applying to the rule is clarifying existing policy about what the provider is to report.
 - The Division received several comments from the Providers Council, which were addressed.
- **10A NCAC 27G .0605 – Local Management Entity Management of Incidents**
 - Ms. Thompson stated that although no changes were being made, it should be noted that this was the one place they were thinking about using the term “determine” that the necessary action had been taken and “determine” that client records had been secured rather than the word “ensure”.
 - If made, the changes would serve to clarify the LME's responsibility.

- **10A NCAC 27G .0606 – Referral of Complaints to Local Management Entities Pertaining to Category A or Category B Providers**
 - Mr. Jarrard advised that the purpose of this rule is to clarify when a LME refers and when a LME undertakes a monitoring event.
 - Ms. Scheyett questioned that there was no timeframes identified. Mr. Jarrard responded that the timeframes were located in the complaint rules.
- **10A NCAC 27G .0607 – Proposed Repeal of Complaints Pertaining to Category A or Category B Providers Excluding ICF/MR Facilities**
 - It is proposed that the above rule be repealed and its language included with the package of rules concerning complaints also submitted at this time.
- **10A NCAC 27G .0608 – Proposed Amendment of Local Monitoring**
 - Mr. Jarrard presented the proposed amendment of Local Monitoring rule which he advised is necessary to update the rule to include accurate information and incorporate additions to make monitoring rules consistent with endorsement and other LME requirements vis-à-vis providers of MH/DD/SA services.
 - Yvonne Copeland, Ex-Officio Committee member, asked that language be added that states the tools do not preclude a monitoring based on uniform triggers. Ms. Fleetwood stated that providers could use this local monitoring information as a part of their quality improvement process.
- **10A NCAC 27G .0609 – Proposed Amendment of Local Management Entity Reporting Requirement**
 - Ms. Thompson presented the two changes to this rule. The first one is to require that LMEs share copies of their quarterly reports with their Area Board and with the Consumer Family Advisory Committees (CFACs). The second change is that the monthly monitoring report has been revised to reflect the new provider frequency monitoring tool requirements.
 - Following Ms. Thompson’s discussion, Christine Trottier, Carolina Legal Assistance, presented an amendment for 10A NCAC 27G .0609 – Local Management Entity Reporting Requirements. The proposed revision is that the last sentence in subsection (b) read as follows: The copies of the report be provided to the LMEs board, local Consumer and Family Advisory Committee, local Client Rights Committee and Carolina Legal Assistance (North Carolina Protection and Advocacy Agency).
- **10A NCAC 27G .0610 – Proposed Amendment of Requirements Concerning the Need for Protective Services**
 - Ms. Thompson presented the proposed amendment which is necessary to update the rule to include accurate information and incorporate additions to make monitoring rules consistent with endorsement and other LME requirements vis-à-vis providers of MH/DD/SA services.
 - Minor changes to this rule included deletion of the word “initiate” in paragraph (a) and replacement of “area authority or county program” with “Local Management Entity” in paragraph (b).

10A NCAC 27G .7000 – Proposed Adoption of LME Response to Complaints

Glenda Stokes and Tracy Ginn, DMH/DD/SAS, Customer Service and Community Rights Team, presented the proposed adoption of LME Response to Complaints rules. The proposed rules are necessary to provide a standardized system clarifying LME responsibilities to address complaint

regarding the provision of public services. The rules are proposed for adoption to specify the LME responsibilities to respond to complaints received concerning the provision of public services pertaining to all provider categories in its catchment area. The rule specifies procedure for LMEs when investigating providers according to 10A NCAC 27G .0606. The rule also provides for LME policies and procedures, timeframes and appeal steps.

The Secretary has rulemaking authority for the subject matter of the proposed rules. The proposed adoptions are presented for information and comment. No action is required. Clayton Cone, Rules Committee member, advised that the return of the appeal from the complainant within ten working days from the date of the informal resolution letter was not enough time. Mr. Cone made a motion that on an appeal the complainant gets thirty (30) days from the time they receive the resolution letter.

Upon motion, second and unanimous vote, the Rules Committee approved the motion to advise the Secretary to consider extending the timeframe of the receipt of appeal from ten (10) to thirty (30) days.

10A NCAC 27I .0200 – Proposed Adoption of Local Business Plan

Mark O'Donnell, DMH/DD/SAS, LME Systems Performance Team, presented the proposed adoption of Local Business Plan rules. House Bill 2077 included legislation which requires every area authority or county program, to develop a LME business plan for the management and delivery of mental health, developmental disabilities, and substance abuse services. A LME business plan shall provide detailed information regarding how the Area Authority or County program will meet State standards, laws, and rules for ensuring quality mental health, developmental disabilities, and substance abuse services, including outcome measures for evaluating program effectiveness. The Secretary has rulemaking authority for the subject matter of the proposed rules. The proposed adoptions are presented for information and comment and no action is required.

Mr. O'Donnell received the following comments and questions:

- Laura Coker, Rules Committee member, commented on the section of the rule that stated “the signatures with the exception of the chairperson of the CFAC shall be made on the cover page accompanying the LME business plan; the CFAC chair may sign either on the cover letter or via separate correspondence”. Mrs. Coker felt that there should be a reconsideration of this rule; she felt that the intent of the CFAC being much more involved in the development of the business plan should include signing on the cover letter as well.
- Mr. McElroy asked how many business plans had been submitted so far for approval and many had been acted on.
 - Mr. O'Donnell responded that it was twenty-four (24) and that all of them have been reviewed within the thirty (30) day statutory timeframe and are in the process of approval.
- The question was asked if there was anyone looking at the plans particularly from the clinical background, such as Dr. Michael Lancaster or someone at that level.
 - Mr. O'Donnell responded that although Dr. Lancaster was not a participant, there were at least ten (10) qualified professionals that were a part of the team that did the reviews.
- A Rules Committee member asked if the local business plan was available to the public and providers.
 - Mr. O'Donnell stated that each LME has generally publicized their local business plan on its website.

10A NCAC 27G .0507 – Proposed Adoption of Area Board Evaluation of an Area Director

Mark O'Donnell presented the proposed adoption of Area Board Evaluation of an Area Director. General Statute 122C-121(b) requires each Area Board to conduct an annual performance evaluation of the Area

Director based on criteria established by the Secretary and the Area board. The Secretary has rulemaking authority for the subject matter of the proposed rules. The proposed adoptions are presented for information and comment and no action is required.

Dr. Richard Brunstetter, Rules Committee member, stated that he lead his board through two annual evaluations and at the end they held workgroups which resulted in developing programmatic goals, developing crisis response team, developing a data base, etc. Dr. Brunstetter recommended including this concept into the rule.

10A NCAC 27G .7100 – Proposed Adoption of Target Population

Spencer Clark, DMH/DD/SAS, Assistant Chief, Community Policy Management Section, presented the proposed adoption of Target Population rules. The proposed rule is necessary to define individuals who are given service priority. The Target Population rule is being created to apply to groups of people considered most in need of services available considering resources within the public system. The Secretary has rulemaking authority for the subject matter of the proposed rules. The proposed adoptions are presented for information and comment and no action is required.

Deby Dihoff, Ex-Officio Committee member, asked if Mr. Clark could comment on the outcome regarding how much of the state dollars have been spent and what proportion have been spent this year. Phillip Hoffman, DMH/DD/SAS, Chief, Resource and Regulatory Management Section, responded that while he did not have the percentage of funds, the unexpended funds at year end in community services dollars was approximately \$38 million. Mr. Hoffman also stated that this is not solely reflective of target populations.

A Commission member asked about the status of substance abuse dollars. Mr. Clark responded that they specifically added a population in March of this year that broadened eligibility so that any consumer who has a substance abuse diagnosis is now eligible for a target population.

Mr. McElroy questioned the statutory authority for this particular rule. Mr. McElroy asked if Mr. Clark could point the Rules Committee to the specific section in G.S. 112C-112.1 where the rule applied. Denise Baker, NC DMH/DD/SAS, Division Affairs Team Leaders, stated that although she was uncertain which specific section from G.S. 112C-112.1 applies to this rule, this particular rule actually came about because of the directive to look into State Plans, Communication Bulletins, etc. that would require rule to be developed in order to be effective under House Bill 2077. Mr. McElroy stated that he had sent a letter to Mike Moseley, NC DMH/DD/SAS Director, requesting that when staff bring a rule to the Rules Committee (Secretary or Commission) that it is specified with particularity the statutory authority for making the rule; this letter was dated July 9, 2007. To alleviate this problem in the future, the Rules Committee needs to know with particularity what statutory basis the Secretary is relying on to enact a rule.

10A NCAC 28F .0214 – Proposed Adoption of LME Utilizations of State Hospitals

Laura White, DMH/DD/SAS, State Operated Services, State Hospital Team Leader, presented the proposed adoption of LME Utilizations of State Hospitals. Adoption of the proposed rule establishes in Administrative Code the Hospital Utilization Plan as first identified in the State Mental Health Plan. The proposed rule is necessary to promote equitable and sustainable utilization of the State operated psychiatric hospitals. The Secretary has rulemaking authority for the subject matter of the proposed rules. The proposed adoptions are presented for information and comment and no action is required.

Ms. White received the following comments and questions:

- Mr. McCullough stated that in the past the Commission decided which programs would be assigned to which hospitals and asked if the Secretary was going to change this.

- Ms. White responded that they were currently using the same rule that the Commission put in place years ago, but they are looking at changing it.
- A Commission member stated that the context of the phrase “LMEs shall comply with the plan utilization of all bed days” implies that they are supposed to use up all their bed days and suggested that it be changed to say “utilization of bed days that count all the different units”. The member also stated that it seemed the plan of correction should involve both the Division of Mental Health and the LME with greater collaboration between the organizations.
- Ms. Scheyett suggested that there be timeframes.
- Ellen Holliman, Rule Committee member, advised that LMEs must be held accountable, both clinically and financially, for over-utilization of bed days.
- Mr. McElroy asked Mrs. White if she knew which subsection of the G.S. 112.C-112.1 that the staff was relying on to say that this was the Secretary rule.
 - Mrs. White referred back to the previous conversation.
- Ms. Baker distributed sections 2.(b) and 4.(m) of Session Law 2006-142, *An Act to Make Changes with Respect to the Implementation of Mental Health Reform*, and stated that at any time once the rule has been published anyone can make public comment challenging the authority of the rule.
- Mr. McElroy clarified once again that he wants staff in the future to come into the Rules Committee with a rule (Secretary or Commission) and have the specific statutory back-up for the authority.

10A NCAC 27A .0300 – Proposed Adoption of Payments, Reporting and Settlement for LME Systems Management

Phillip Hoffman, Chief, DMH/DD/SAS Resource and Regulatory Management Section, presented the proposed adoption of Payments, Reporting and Settlement for LME. The proposed rules are necessary to formally incorporate the process and procedures into these rules from current policy. By settling Local Management Entity Systems Management (LME SM) payments as set forth in these rules, the Division will limit its payments to LMEs based on actual expenditures and their actual Medicaid earnings. The Secretary has rulemaking authority for the subject matter of the proposed rules. The proposed adoptions are presented for information and comment and no action is required.

Discussion on Thematic Areas Generated from Commission Retreat

Criminal Justice

Martha Lamb, DMH/DD/SAS, Justice Innovations Team, provided an update on the development of the Criminal Justice rules. Mrs. Lamb stated that the rules were reviewed by the External Advisory Team and the next phase is that they need to go through ELT. Following this process, the rules will go presented at the Rules Committee meeting in October.

Qualified Professional/Associate Professional

Denise Baker, DMH/DD/SAS, Division Affairs Team Leader, presented the update on Qualified Professional/Associate Professional. Ms. Baker stated that the workgroup is looking at the rules as they currently exist and they have identified the following issues to be addressed:

- 1) concerns regarding competence of staff at all levels;
- 2) whether or not improved clinical practice knowledge and understanding across disability areas are needed;
- 3) qualified professional definition to provide additional clarification about the credentialing necessary to fulfill those requirements;
- 4) basic training that would apply to all disability groups;
- 5) clarification of what it means when the rules says “experience with the population served”;

- 6) clarification and updating of the definition of human services degrees;
- 7) the implementation of evidenced-based practices and the need for that to be improved upon; and
- 8) the expectations concerning employment at the paraprofessional level.

Ms. Baker further stated that the group met monthly and that there is active participation by all members.

Public Comment:

Louise Fisher made a statement regarding Wake County and the over use of Dix Hospital. Ms. Fisher stated that North Carolina's Reform plan does not supersede North Carolina's commitment law for hospitalization and that this statement was confirmed by Representative Verla Insko.

Paula Cox Fishman thanked the Rules Committee for their work and commitment.

There being no further business, the meeting adjourned at 3:30 pm

